

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
SECRETARY OF REVENUE

IN THE MATTER OF:

The Proposed Assessment of Penalties)
and Interest by the Secretary of Revenue)
of North Carolina)
)
vs.)
)
[Decedent's Estate])

FINAL DECISION
Docket No. 2002-296

This matter was heard before the Assistant Secretary for Administrative Tax Hearings, Eugene J. Cella, on June 18, 2002, upon an application for a hearing by the attorney for the estate of [Decedent] on behalf of the executors of the estate wherein they protested the assessment of penalties. The hearing was held by the Assistant Secretary under the provisions of G.S. 105-260.1 and was attended by [the Attorney for the estate]; [two Co-Executors]; and W. Edward Finch, Jr., Assistant Director of the Personal Taxes Division. [One co-executor] is hereinafter referred to separately as "Executrix."

ISSUE

The issues to be decided in this matter are as follows:

1. Is the assessment proposed against Decedent's estate lawful and proper?
2. Does reasonable cause exist for waiving the 25 percent late filing penalty or the 10 percent late payment penalty?

EVIDENCE

The evidence presented at the hearing by W. Edward Finch, Jr., included the following:

1. Memorandum from E. Norris Tolson, Secretary of Revenue, to Eugene J. Cella, Assistant Secretary for Administrative Tax Hearings, dated May 16, 2001, a copy of which is designated as Exhibit PT-1.
2. Decedent's North Carolina Estate Tax Return, a copy of which is designated as Exhibit PT-2.

3. Decedent's North Carolina Application for Automatic Six-Month Extension of Time to File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes, dated July 25, 2001, a copy of which is designated as Exhibit PT-3.
4. Notice of Tax Assessment dated February 4, 2002, a copy of which is designated as Exhibit PT-4.
5. Letter from [a Certified Public Accountant] to the Department of Revenue dated July 25, 2001, with related attachment, copies of which are collectively designated as Exhibit PT-5.
6. Letter from R. A. Edwards, Tax Auditor in the Central Examination Division, to Executrix dated September 5, 2001, a copy of which is designated as Exhibit PT-6.
7. Letter from Attorney to the Department of Revenue dated February 19, 2002, a copy of which is designated as Exhibit PT-7.
8. Letter from W. Edward Finch, Jr., to Attorney dated April 3, 2002, a copy of which is designated as Exhibit PT-8.
9. Letter from Attorney to W. Edward Finch, Jr., dated April 10, 2002, a copy of which is designated as Exhibit PT-9.
10. Letter from Eugene J. Cella to Attorney dated April 24, 2002, a copy of which is designated as Exhibit PT-10.

Evidence presented by Attorney at the hearing consisted of the following:

1. Notarized affidavit of the servicing attorney for Co-Executors dated June 17, 2002, a copy of which is designated as Exhibit TP-1.
2. Notarized affidavit of the paralegal for the servicing attorney dated June 17, 2002, a copy of which is designated as Exhibit TP-2.

Attorney and Co-Executors stated at the hearing that they had relied on Decedent's former long-time accountant to timely file the request for extension of time to file the State estate tax return. Not until some time after the due date of the extension did they discover that due to the accountant's serious illness he had not filed the extension.

FINDINGS OF FACT

Based on the foregoing evidence of record, the Assistant Secretary makes the following findings of fact:

1. Decedent died on June 24, 2000. An application for extension of time to file the U.S. estate tax return was filed on July 25, 2001. On the same date, a copy of the federal extension request was filed with the Department of Revenue and payment of \$136,000 was included with the application. The due date for filing the extension for Decedent's estate was March 24, 2001. The Department denied the request for extension because it was not timely filed.

2. The North Carolina estate tax return was filed on October 1, 2001. The return reflected tax of \$160,292. Payment of \$24,292 was included with the return for the difference between the tax shown due on the return and the amount paid with the extension request.
3. The auditor assessed the late filing penalty of \$40,073.00 and the late payment penalty of \$16,029.20. A Notice of Estate Tax Assessment reflecting the penalties was mailed to Executor on February 4, 2002. The proposed assessment, in error, reflected interest of \$5,110.40. The correct interest accrued from the due date (March 24, 2001) through the dates the tax was paid (August 1 and October 3, 2001) is \$4,962.30.
4. Co-Executors objected to the proposed assessment of penalties and timely requested an administrative tax hearing before the Secretary of Revenue.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the Assistant Secretary makes the following conclusions of law:

1. The North Carolina estate tax return must be filed and the tax paid within nine months from the date of death. An extension of time to file a federal estate tax return is an automatic extension of time to file a North Carolina estate tax return. The extension may not be for more than six months except for executors who are abroad.
2. To receive an extension of time to file the North Carolina estate tax return and pay the tax, a request for extension must be submitted in writing to the Department of Revenue on or before the due date of the return.
3. A penalty of five percent of the tax (maximum 25 percent) for each month is required for failure to file an estate tax return by the due date of the return. A penalty of ten percent of the tax is required for failure to pay the estate tax when due. Because Executrix did not file the estate tax return until October 1, 2001, nor pay the tax when due, the late filing and late payment penalties were properly and lawfully assessed.
4. The Secretary of Revenue is authorized to waive or reduce any penalty. Such waiver or reduction results from the taxpayer establishing reasonable cause for waiving or reducing the penalty assessed. The Secretary is not authorized to waive or reduce interest.

DECISION

Pursuant to the Department's penalty policy, penalties may be waived in situations in which compliance was precluded because of the serious, sudden illness of the taxpayer's tax preparer. The facts establish that the accountant's illness directly contributed to the failure to comply with the extension requirements. However, the Assistant Secretary notes that even if

Co-Executors had timely filed the request for extension, the estate tax return ultimately filed on October 1, 2001 would not have been filed within the required six month extended period ending on September 24, 2001. Accordingly, the Assistant Secretary finds that reasonable cause exists for reducing the late filing penalty from \$40,073.00 (25 percent of the tax) to \$8,014.60 (5 percent of the tax). The late payment penalty is sustained. There is no provision in the law for the waiver of accrued interest on tax.

The estate tax liability is amended to reduce the late filing penalty and to correct the aforementioned error in the calculation of interest as follows:

Tax	\$160,292.00
Failure to file penalty	8,014.60
Failure to pay penalty	16,029.20
Interest	<u>4,962.30</u>
Total	\$189,298.10
Less paid	<u>160,292.00</u>
Total due	<u>\$ 29,006.10</u>

The estate tax assessment as herein modified is hereby sustained in its entirety and is finally determined and immediately due and collectible as allowed by law.

Made and entered this 10th day of September, 2002.

Signature _____

Eugene J. Cella

Assistant Secretary for Administrative Tax Hearings
North Carolina Department of Revenue